

EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL SANDERS, Individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE REALREAL, INC., *et al.*,

Defendants.

Case No: 5:19-cv-07737-EJD

**[PROPOSED] ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

CLASS ACTION

Hon. Edward J. Davila

WHEREAS, Lead Plaintiff Michael Sanders and named plaintiffs Nubia Lorelle and Garth Wakeford (“Plaintiffs”) and Defendant The RealReal, Inc. (“TRR”); Defendants Julie Wainwright, Matt Gustke, Steve Lo, Chip Baird, Maha Ibrahim, Rob Krolik, Michael Kumin, Stefan Larsson, Niki Leondakis, and James Miller (“Individual Defendants”); and Defendants Credit Suisse Securities (USA) LLC, BofA Securities, Inc., UBS Securities LLC, KeyBanc Capital Markets Inc., Stifel, Nicolaus & Company, Cowen and Company, LLC, and Raymond James & Associates, Inc. (“Underwriter Defendants,” and collectively with TRR and the Individual Defendants, “Defendants”) have entered into the Stipulation of Settlement dated November 5, 2021 (“Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure, and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the securities class action pending before the Court titled, *Sanders v. The RealReal, Inc., et al.*, Case No. 5:19-cv-07737-EJD (N.D. Cal.) (“Action”); and the Court having read and considered the Stipulation and the exhibits thereto and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and the Parties having consented to the entry of this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this ____ day of _____, 2021, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.
2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all persons and entities who purchased TRR common stock from June 27, 2019 through November 20, 2019, both dates inclusive, and were damaged thereby. Included in the Settlement Class are all Persons who purchased TRR common stock pursuant to and/or traceable to TRR’s Registration Statement issued in connection with TRR’s June 27, 2019 IPO and all persons and entities who purchased TRR common stock during the Settlement Class Period at artificially inflated prices and were damaged thereby. Excluded from the Class are: (a) persons who suffered no compensable losses; and (b) Defendants; the present and former officers and directors of the Company at all relevant times; members of their immediate families and their

1 legal representatives, heirs, successors, or assigns, and any entity in which any of the Defendants,
2 or any person excluded under this subsection (b), has or had a majority ownership interest at any
3 time.

4 3. This Court finds, preliminarily and for purposes of the Settlement of the Action
5 only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of
6 Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so
7 numerous that joinder of all members of the Settlement Class is impracticable; (b) there are
8 questions of law and fact common to the Settlement Class; (c) Plaintiffs' claims are typical of the
9 claims of the Settlement Class they seek to represent; (d) Plaintiffs fairly and adequately represent
10 the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class
11 predominate over any questions affecting only individual members of the Settlement Class; and
12 (f) a class action is superior to other available methods for the fair and efficient adjudication of
13 the Action.

14 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for
15 the purposes of the Settlement of the Action only, Plaintiffs are certified as the class
16 representatives on behalf of the Settlement Class ("Class Representatives") and Lead Counsel,
17 selected by Plaintiffs and previously appointed by the Court, is hereby appointed as class counsel
18 for the Settlement Class ("Class Counsel").

19 5. The Court finds that (a) the Settlement memorialized in the Stipulation resulted
20 from good faith, arm's length negotiations, and (b) the Settlement memorialized in the Stipulation
21 is sufficiently fair, reasonable, and adequate to the Settlement Class Members to warrant
22 providing notice of the Settlement to Settlement Class Members and to hold a Settlement Hearing.

23 6. The Court hereby preliminarily approves the Settlement, subject to further
24 consideration at a Settlement Hearing pursuant to Federal Rules of Civil Procedure 23(e), which
25 is hereby scheduled to be held before the Court on _____, 2022 at __:___ .m. for the
26 following purposes:

27 (a) to determine finally whether the applicable prerequisites for class action
28 treatment of the Action under Federal Rules of Civil Procedure 23(a) and (b) are satisfied;

(b) to determine finally whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine finally whether the Final Judgment, substantially in the form of Exhibit B to the Stipulation, should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release by the Releasing Parties of the Released Claims against the Released Parties, as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to prosecute or attempt to prosecute any Released Claims extinguished by the release against any of the Released Parties, as also set forth in the Stipulation;

(d) to determine finally whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

(e) to consider the applications of Class Counsel for awards of attorneys' fees with interest and expenses to Class Counsel and Compensatory Award to Class Representatives;

(f) to consider Settlement Class Members' objections to the Settlement, if any, whether submitted previously in writing or presented orally at the Settlement Hearing by Settlement Class Members (or by counsel on their behalf), provided that they give proper notice that they intend to appear at the Settlement Hearing; and

(g) to rule upon such other matters as the Court may deem appropriate.

7. The Court reserves the right to adjourn the Settlement Hearing to a later date and to approve the Settlement without modification, or with such modifications as may be agreed to by the Parties, with or without further notice of any kind. The Court may decide to hold the Settlement Hearing telephonically or by other virtual means without further notice. The Court further reserves the right to enter its Final Judgment approving the Settlement and dismissing the Action on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

1 8. The Court reserves the right to approve the Settlement with such modifications as
2 may be agreed upon or consented to by the Parties and without further notice to the Settlement
3 Class where to do so would not impair Settlement Class Members' rights in a manner inconsistent
4 with Rule 23, other applicable rules or regulations, or due process of law.

5 9. The Court approves the form, substance, and requirements of (a) the Long Notice,
6 (b) the Summary Notice, and (c) the Proof of Claim, all of which are exhibits to the Stipulation.

7 10. Class Counsel has the authority to enter into the Settlement on behalf of Plaintiffs
8 and the Settlement Class and has the authority to act on behalf of the Settlement Class with respect
9 to all acts or consents required by or that may be given pursuant to the Stipulation or such other
10 acts that are reasonably necessary to consummate the Settlement.

11 11. Strategic Claims Services is appointed and approved as the Claims Administrator
12 to supervise and administer the notice procedure as well as the processing of claims.

13 12. The Escrow Agent may, at any time after entry of this Order and without further
14 approval from Defendants or the Court, disburse at the direction of Class Counsel up to \$250,000
15 from the Settlement Fund prior to the Effective Date to pay Administrative Costs. After the
16 Effective Date, additional amounts, up to \$125,000, may be transferred from the Settlement Fund
17 to pay for any necessary additional Administrative Costs without further order of the Court.

18 13. No later than five Business Days after entry of the Preliminary Approval Order,
19 TRR shall obtain from its transfer agent, at Defendants' expense, a list of certificate or record
20 holders who may have purchased shares of TRR common stock during the Settlement Class
21 Period. TRR shall provide, or cause its transfer agent to provide, to the Claims Administrator a
22 list of the names, addresses, and email addresses (if available) of the record owners of TRR
23 common stock during the Settlement Class Period in a usable electronic format, such as an Excel
24 spreadsheet. Any information provided to Lead Counsel by the Company pursuant to this
25 paragraph shall be treated as confidential and will be used by Lead Counsel and the Claims
26 Administrator solely to disseminate notice, apprise Settlement Class Members of the Settlement,
27 and/or implement the Settlement.

1 14. Within 30 days of the entry of this Order, Class Counsel, through the Claims
2 Administrator, shall either: (a) email links to the location of the Long Notice and Proof of Claim
3 to Settlement Class Members for whom the Claims Administrator is able to obtain email
4 addresses, substantially in the form annexed to the Stipulation as Exhibit A-1 and Exhibit A-2; or
5 (b) if no electronic mail address can be obtained, cause the Long Notice to be mailed, by first
6 class mail, postage prepaid, to Settlement Class Members who can be identified with reasonable
7 effort by Class Counsel, through the Claims Administrator.

8 15. Class Counsel, through the Claims Administrator, shall make all reasonable efforts
9 to give notice to nominees or custodians who held TRR common stock during the Settlement
10 Class Period as record owners but not as beneficial owners. Such nominees or custodians shall,
11 within 10 days of receipt of the notice, either: (i) request copies of the Long Notice sufficient to
12 send the Long Notice to all beneficial owners for whom they are nominee or custodian, and within
13 10 days after receipt thereof send copies to such beneficial owners; (ii) request links to the location
14 of the Long Notice and Proof of Claim and email the links to each beneficial owner for whom
15 they are nominee or custodian within 10 days after receipt thereof; or (iii) provide the Claims
16 Administrator with lists of the names, last known addresses, and email addresses (to the extent
17 known) of such beneficial owners, in which event the Claims Administrator shall promptly deliver
18 the Long Notice to such beneficial owners. If the Claims Administrator receives an email address,
19 it will send a link to the location of the Long Notice and Proof of Claim electronically. Nominees
20 or custodians who elect to email links to the Long Notice and Proof of Claim or send the Long
21 Notice to their beneficial owners shall send a written certification to the Claims Administrator
22 confirming that the mailing or emailing has been made as directed. Copies of the Long Notice
23 shall be made available to any nominee or custodian requesting same for the purpose of
24 distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse
25 nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket
26 expenses incurred in providing notice to beneficial owners, which expenses would not have been
27 incurred except for the providing names and addresses, of up to \$0.05 per name, address, and
28 email address provided to the Claims Administrator; up to \$0.05 per unit for each Long Notice

1 actually mailed, plus postage at the pre-sort rate used by the Claims Administrator; or up to \$0.05
2 per email notice sent, and subject to further order of this Court with respect to any dispute
3 concerning such reimbursement.

4 16. Class Counsel shall, at least seven days before the Settlement Hearing, serve upon
5 counsel for Defendants and file with the Court proof of the mailing of the Long Notice as required
6 by this Order.

7 17. Class Counsel, through the Claims Administrator, shall cause the Stipulation and
8 its exhibits, this Order, and a copy of the Long Notice and Proof of Claim to be posted on the
9 Claims Administrator's website within 16 days of the entry of this Order.

10 18. Class Counsel, through the Claims Administrator, shall cause the Summary Notice
11 to be published electronically once on the *GlobeNewswire* and in print once in the *Investor's*
12 *Business Daily* within 10 days after the Long Notice mailing or emailing links to the location of
13 the Long Notice and Proof of Claim. Class Counsel shall, at least seven days before the Settlement
14 Hearing, serve upon counsel for Defendants and file with the Court proof of publication of the
15 Summary Notice.

16 19. The forms and methods set forth herein of notifying the Settlement Class Members
17 of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of
18 the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities Exchange Act of
19 1934, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995;
20 constitute the best notice practicable under the circumstances; and constitute due and sufficient
21 notice to all persons and entities entitled thereto. No Settlement Class Member will be relieved
22 from the terms and conditions of the Settlement, including the releases provided for therein, based
23 upon the contention or proof that such Settlement Class Member failed to receive actual or
24 adequate notice.

25 20. In order to be entitled to participate in recovery from the Net Settlement Fund after
26 the Effective Date, each Settlement Class Member shall take the following action and be subject
27 to the following conditions:
28

1 (a) A properly completed and executed Proof of Claim must be submitted to
2 the Claims Administrator: (a) electronically through the Claims Administrator's website,
3 www.strategicclaims.net/TRR, by 11:59 p.m. EST on _____, 2022; or (b) at the
4 Post Office Box indicated in the Notice, postmarked no later than _____, 2022
5 (30 days prior to the Settlement Hearing). Such deadline may be further extended by Order
6 of the Court. Each Proof of Claim shall be deemed to have been submitted when: (a) the
7 claim receives a confirmation notice from Strategic Claims Services for electronic
8 submissions; or (b) legibly postmarked (if properly addressed and mailed by first class
9 mail) provided such Proof of Claim is actually received before the filing of a motion for
10 an Order of the Court approving distribution of the Net Settlement Fund. Any Proof of
11 Claim submitted in any other manner shall be deemed to have been submitted when it was
12 actually received by the Claims Administrator at the address designated in the Notice.

13 (b) The Proof of Claim submitted by each Settlement Class Member must
14 satisfy the following conditions: (i) it must be properly completed, signed, and submitted
15 in a timely manner in accordance with the provisions of the preceding subparagraph; (ii)
16 it must be accompanied by adequate supporting documentation for the transactions
17 reported therein, in the form of broker confirmation slips, broker account statements, an
18 authorized statement from the broker containing the transactional information found in a
19 broker confirmation slip, or such other documentation as is deemed adequate by the
20 Claims Administrator or Class Counsel; (iii) if the person executing the Proof of Claim is
21 acting in a representative capacity, a certification of their current authority to act on behalf
22 of the Settlement Class Member must be provided with the Proof of Claim; and (iv) the
23 Proof of Claim must be complete and contain no material deletions or modifications of
24 any of the printed matter contained therein and must be signed under penalty of perjury.

25 (c) Once the Claims Administrator has considered a timely submitted Proof of
26 Claim, it shall determine whether such claim is valid, deficient, or rejected. For each claim
27 determined to be either deficient or rejected, the Claims Administrator shall send a
28 deficiency letter or rejection letter as appropriate, describing the basis on which the claim

was so determined. Persons who timely submit a Proof of Claim that is deficient or otherwise rejected shall be afforded a reasonable time (at least 10 days) to cure such deficiency, if it shall appear that such deficiency may be cured. If any Claimant whose claim has been rejected in whole or in part wishes to contest such rejection, the Claimant must, within 10 days after the date of mailing of the notice, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If an issue concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the Court.

(d) As part of the Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall, upon the Effective Date, release all claims as provided in the Stipulation. No discovery shall be allowed on the merits of the Action or the Settlement in connection with processing of the Proof of Claim, nor shall any discovery from or of Defendants be allowed on any topic.

21. All Settlement Class Members who do not submit valid and timely Proofs of Claim will be forever barred from receiving any payments from the Net Settlement Fund but will in all other respects be subject to and bound by the provisions of the Stipulation and the Final Judgment, if entered.

22. Settlement Class Members shall be bound by all determinations and judgments in the Action whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request for exclusion from the Settlement shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than _____, 2022 (21 days prior to the Settlement Hearing) ("Exclusion Deadline"), to the address listed in the Long Notice. In order to be valid, such request for exclusion must: (A) indicate the name, address, phone number, and e-mail contact information (if any) of the Person seeking exclusion, and state that the sender specifically "requests to be excluded from the Settlement of *Sanders v. The RealReal, Inc., et al.*, Case No. 5:19-cv-07737-EJD (N.D. Cal.); and

(B) state the date, number of shares, and dollar amount of each TRR common stock purchase or acquisition and, if applicable, each sale during the Settlement Class Period, as well as the number of shares of TRR common stock held by the Person as of the opening and closing of the Settlement Class Period. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase or acquisition and, if applicable, sale transaction of TRR common stock during the Settlement Class Period; and (ii) demonstrating the Person's status as a beneficial owner of the TRR common stock. Any such request for exclusion must be signed and submitted by the beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless it provides the required information, is legible, and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Class Counsel may contact any Person filing a request for exclusion, or their attorney if one is designated, to discuss the request for exclusion.

23. The Claims Administrator shall provide all requests for exclusion and supporting documentation submitted therewith (including untimely requests and revocations of requests) to counsel for the Parties as soon as possible and no later than the Exclusion Deadline or upon the receipt thereof (if later than the Exclusion Deadline). The Settlement Class will not include any Person who delivers a valid and timely request for exclusion that has not been thereafter revoked.

24. Any Person that submits a request for exclusion may thereafter submit to the Claims Administrator a written revocation of that request for exclusion, provided that it is received no later than two Business Days before the Settlement Hearing, in which event that Person will be included in the Settlement Class.

25. All Persons who submit a valid, timely, and unrevoked request for exclusion will be forever barred from receiving any payments from the Net Settlement Fund.

26. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, provided, however, that no Settlement Class Member or other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Plan of Allocation, or the Fee and Expense Application, or any other order relating thereto, unless, at least 21 days prior to the Settlement Hearing Date, that Person has filed said objections, papers, and briefs with the Clerk of the Court,

1 U.S. District Court, Northern District of California, 280 South 1st Street, Room 2112, San Jose,
2 California 95113.

3 27. To be valid, any such objection must contain the Settlement Class Member's: (1)
4 name, address, and telephone number; (2) a list of all purchases and sales of TRR common stock
5 during the Settlement Class Period in order to show membership in the Settlement Class; (3) all
6 grounds for the objection, including any legal support known to the Settlement Class Member
7 and/or his, her, or its counsel; (4) the name, address and telephone number of all counsel who
8 represent the Settlement Class Member, including former or current counsel who may be entitled
9 to compensation in connection with the objection; and (5) the number of times the Settlement
10 Class Member and/or his, her, or its counsel has filed an objection to a class action settlement in
11 the last five years, the nature of each such objection in each case, the jurisdiction in each case,
12 and the name of the issuer of the security or seller of the product or service at issue in each case.
13 Attendance at the Settlement Hearing is not necessary, but Persons wishing to be heard orally in
14 opposition to the approval of the Stipulation, the Plan of Allocation, and/or the Fee and Expense
15 Application are required to indicate in their written objection (or in a separate writing that is
16 submitted in accordance with the deadline and instructions pertinent to the submission of a written
17 objection) that they intend to appear at the Settlement Hearing and identify any witnesses they
18 may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing.
19 Settlement Class Members do not need to appear at the Settlement Hearing or take any other
20 action to indicate their approval.

21 28. Any Settlement Class Member who does not object in the manner prescribed above
22 shall be deemed to have waived all such objections and shall forever be foreclosed from making
23 any objection to the fairness, adequacy, or reasonableness of the Settlement, the Judgment to be
24 entered approving the Settlement, the Plan of Allocation, and/or the Fee and Expense Application,
25 unless otherwise ordered by the Court; shall be bound by all the terms and provisions of the
26 Stipulation and by all proceedings, orders and judgments in the Action; and shall also be
27 foreclosed from appealing from any judgment or order entered in this Action.

1 29. The Court reserves the right to adjourn the Settlement Hearing without any further
2 notice other than entry of an Order on the Court's docket and to approve the Settlement without
3 further notice to the Settlement Class Members.

4 30. All papers in support of the Settlement, the Plan of Allocation, and/or the Fee and
5 Expense Application shall be filed and served no later than 35 days before the Settlement Hearing.

6 31. Any submissions filed in response to any objections or in further support of the
7 Settlement, the Plan of Allocation, and/or the Fee and Expense Application shall be filed no later
8 than 14 days prior to the Settlement Hearing.

9 32. Defendants, their counsel, and other Released Parties shall have no responsibility
10 for, or liability with respect to, the Plan of Allocation or any application for attorneys' fees and
11 interest, or expenses or payments to the Class Representative submitted by Class Counsel, and
12 such matters will be considered separately from the fairness, reasonableness, and adequacy of the
13 Settlement.

14 33. Pending final determination of whether the Settlement should be approved, all
15 Releasing Parties shall be enjoined from commencing, prosecuting, or attempting to prosecute
16 any Released Claims against any Released Party in any court or tribunal or proceeding. Unless
17 and until the Stipulation is cancelled and terminated pursuant to the Stipulation, all proceedings
18 in the Action, other than such proceedings as may be necessary to carry out the terms and
19 conditions of the Stipulation, are hereby stayed and suspended until further order of the Court.

20 34. All funds held by the Escrow Agent shall be deemed and considered to be in the
21 custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as
22 such funds shall be distributed or returned pursuant to the Stipulation and Plan of Allocation
23 and/or further order(s) of the Court.

24 35. Neither the Stipulation, nor any of its terms or provisions, nor any of the
25 negotiations or proceedings connected with it, shall be construed as an admission or concession
26 by Defendants, their counsel, or any of the other Released Parties of the truth of any of the
27 allegations in the Action, or of any liability, fault, or wrongdoing of any kind and shall not be
28 construed as, or deemed to be evidence of, or an admission or concession that Class

1 Representatives or any Settlement Class Members directly have suffered any damages, harm, or
2 loss. Further, neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations
3 or proceedings connected with it, nor this Order shall be construed as an admission or concession
4 by Class Representatives of the validity of any factual or legal defense or of the infirmity of any
5 of the claims or facts alleged in the Action.

6 36. In the event the Settlement is not consummated in accordance with the terms of
7 the Stipulation, then the Stipulation and this Order (including any amendment(s) thereof, and
8 except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of
9 no further force or effect, and without prejudice to any Party, and may not be introduced as
10 evidence or used in any action or proceeding by any Person against the Parties or the Released
11 Parties, and each Party shall be restored to his, her, or its respective litigation positions as they
12 existed prior to July 26, 2021, pursuant to the terms of the Stipulation.

13 37. The Court reserves the right to alter the time or the date of the Settlement Hearing
14 without further notice to the Settlement Class Members, provided that the time or the date of the
15 Settlement Hearing shall not be set at a time or date earlier than the time and date set forth in ¶ 6
16 above. The Court retains exclusive jurisdiction over the Action to consider all further matters
17 arising out of, or relating to, the Stipulation, including by way of illustration and not limitation,
18 any dispute concerning any Proof of Claim submitted and any future requests by one or more of
19 the Parties that the Judgment, the releases and/or the permanent injunction set forth in the
20 Stipulation be enforced.

21
22 Dated: _____, 2021

23
24 _____
25 HON. EDWARD J. DAVILA
26 UNITED STATES DISTRICT JUDGE
27
28